

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

JOHN THOMAS FALVEY,

Case No. 3:23-cv-00120-ART-CSD

Plaintiff,

ORDER

v.

ELKO SHERIFF DEPT, et al.,

Defendants.

Plaintiff John Thomas Falvey brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Elko County Detention Center. (ECF No. 1-1.) On March 23, 2023, this Court ordered Falvey to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before May 23, 2023. (ECF No. 2.) The Court warned Falvey that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 2). That deadline expired and Falvey did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond. Furthermore, the Court's order came back as undeliverable to the address that Plaintiff provided to the Court. (ECF No. 3.)

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)

(dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissal of Falvey's claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

The fifth factor requires the Court to consider whether less drastic alternatives can be used to correct the party's failure that brought about the Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally dismissing a case, but must explore possible and meaningful alternatives.”

1 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action  
2 cannot realistically proceed until and unless Falvey either files a fully complete  
3 application to proceed *in forma pauperis* or pays the \$402 filing fee for a civil  
4 action, the only alternative is to enter a second order setting another deadline.  
5 But the reality of repeating an ignored order is that it often only delays the  
6 inevitable and squanders the Court's finite resources. The circumstances here do  
7 not indicate that this case will be an exception: the Court's order came back as  
8 undeliverable to the address that Falvey provided to the Court. As such, it is  
9 unlikely that a second order would even reach Falvey. Setting a second deadline  
10 is not a meaningful alternative given these circumstances. So the fifth factor  
11 favors dismissal.

## 12 **II. CONCLUSION**

13 Having thoroughly considered these dismissal factors, the Court finds that  
14 they weigh in favor of dismissal. It is therefore ordered that this action is  
15 dismissed without prejudice based on Falvey's failure to file a fully complete  
16 application to proceed *in forma pauperis* or pay the full \$402 filing fee in  
17 compliance with this Court's March 23, 2023, order. The Clerk of Court is  
18 directed to enter judgment accordingly and close this case. No other documents  
19 may be filed in this now-closed case. If Falvey wishes to pursue his claims, he  
20 must file a complaint in a new case.

21 DATED THIS 14<sup>th</sup> day of June 2023.

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24 ANNE R. TRAUM  
25 UNITED STATES DISTRICT JUDGE  
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